IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 390 OF 2007

Shrirang Dasa Shinde and Ors. .. Appellants

V/s

Nandkumar Vasantrao Patil .. Respondent

Shri Sandeep S. Salunkhe for Appellants

Shri A.M.Kulkarni for Respondent

CORAM:S.R.SATHE,J.

DATED:8th Aug. 2007

P.C.:-

1. Heard both the learned Advocates.

2. Appellants original defendants in Regular Civil Suit NO.148 of 1995 had filed Regular Civil Appeal No.117 of 1999 against the judgment and order passed against them. The said appeal was fixed for hearing on 27-1-2003, on that day the learned Advocate for the defendants submitted that one day time be granted.The learned 5th Ad Hoc Additional District Judge, Solapur rejected the application for granting time and as the learned Advocate for the defendants did not advance argument he dismissed the appeal on 27-11-2003.

3. Being aggrieved by the said order the original defendant no.1 Shrirang Shinde filed Civil Misc. Application NO.396 of 2003 and prayed that the order of dismissal dated 27-11-2003 be set aside and the appeal be re-admitted. The said application was obviously opposed by the original plaintiffs. They contended that execution proceedings are filed against the defendants and with a view to delay the matter the original defendants deliberately protracted the matter and hence the application be rejected.

4. The learned 5th Ad Hoc Additional District Judge, Solapur after hearing the arguments of both the learned Advocates came to the conclusion that defendants wanted to protract the matter and there was no justification for re-admitting the appeal. He, therefore, rejected the Civil Misc. Application NO.396 of 2003 on 7-3-2007.

5. The above mentioned order is challenged in the present A.O. One thing is certain that the present defendants had challenged the decree by filing appeal bearing Appeal No.117 of 1999. When the said appeal came up for hearing, the learned Advocate for the Appellants original defendants was seeking only one day adjournment. However, it was rejected and the appeal was dismissed. Thus, there was no decision of the appeal on merits. It is difficult to belive that on 27-11-2003 the learned Advocate for the Appellants original defendants made submission for one day adjournment with a view to delay

the proceedings or that there was any ill-intention on the part of the defendants on that day for seeking adjournment. So, considering the said aspect the application for re-admitting the appeal should have been allowed. So, with a view that the matter is decided once for all on merits, after giving due opportunity to the defendants in the interest of justice the order passed by the 5th Ad hoc Additional District Judge, Solapur in Civil Misc. Application No.396 of 2003 is set aside. The defendants are directed to pay costs of Rs.3,000/- to the original plaintiffs the present Respondents. The Appellants original defendants to deposit the costs in lower court within two weeks from today. On Appellants depositing the cost accordingly the Regular Civil Appeal No.117 of 1999 be restored to its original number and the same be disposed of by the appellate Court according to law as expeditiously as possible.

6. At this stage the larned Advocate for the Appellants original defendants submitted that interim relief granted by this Court on 5-6-2007 be extended till the disposal of Regular Civil Appeal No.117 of 1999. Hence the interim relief granted by this Court (Coram:A.S.Oka,J) on 5-6-2007 is to continue only till the restoration of the appeal. If the present appellants original defendants fail to deposit the costs as above the interim relief granted on 5-6-2007 shall automatically come to an end.

(S.R.SATHE,J.)